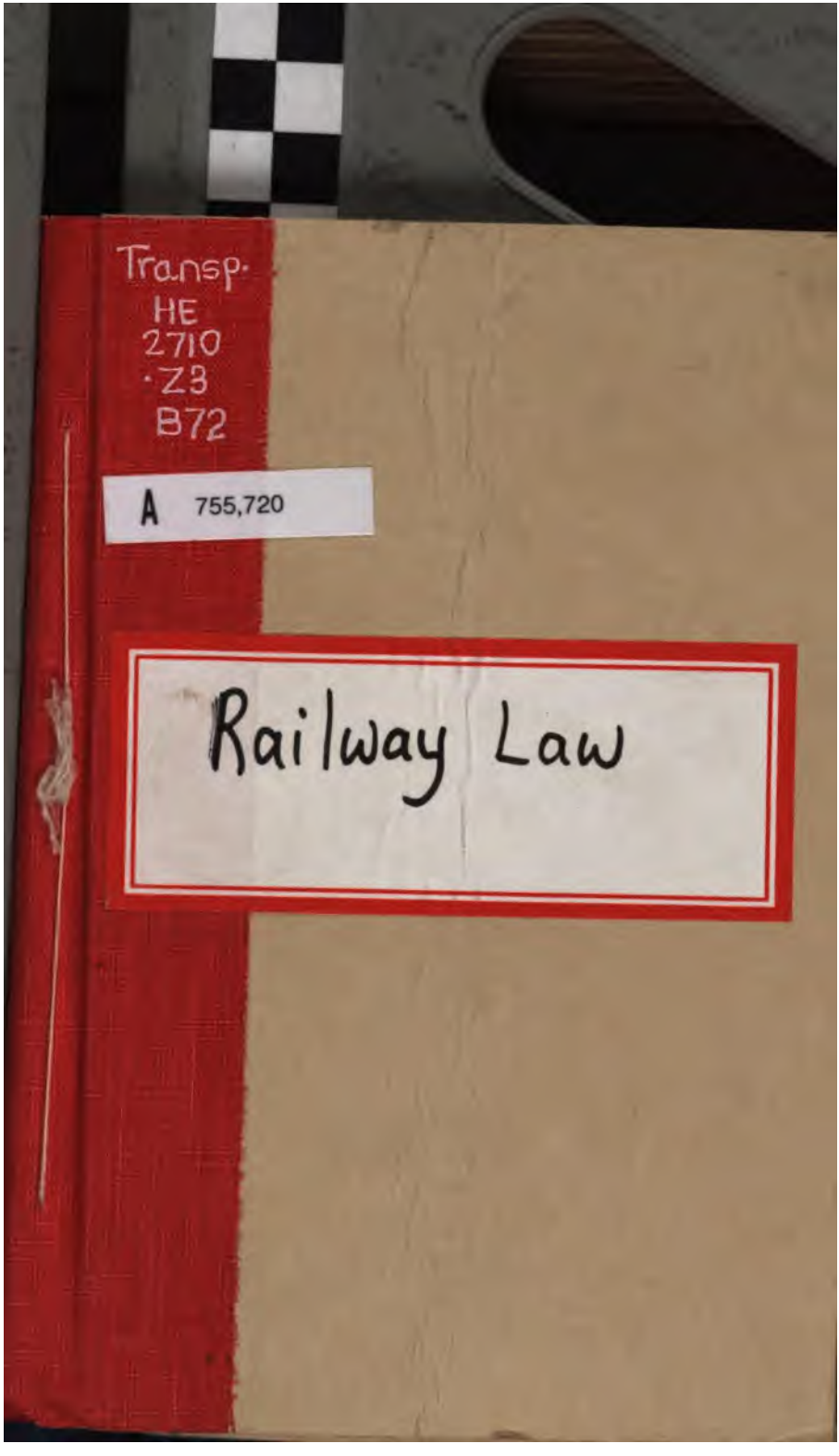

Railway Law

TESTIMONIALS.

FROM THE HON. T. LYLE DICKEY, OF THE ILLINOIS SUPREME COURT.

CHICAGO, Dec. 23, 1878.

TO THE RAILWAY AGE PUBLISHING COMPANY:

I have looked through your little book called "Railway Law for Railway Men," and think it is a valuable book. The plan of compilation is good, and so far as I have been able to examine it seems to be well executed. It presents in a small compass rules which can only be learned elsewhere by the examination of many books.

Every railway employe ought to have a copy, and study it carefully. It will also be found needful and interesting to railway travelers.

Respectfully,

T. LYLE DICKEY.

FROM THE ILLINOIS APPELLATE COURT, FIRST DISTRICT.

CHARLES L. BONNEY, ESQ.:

DEAR SIR: We have looked with some care and interest through your little volume of "Railway Law for Railway Men" Its clear and authoritative statements of respective rights and duties will undoubtedly serve the interests of carriers and promote the safety and comfort of the traveling community. We

cheerfully recommend it to those for whose use it is more particularly designed.

Very truly yours,

GEO. W. PLEASANTS,
T. D. MURPHY,
J. M. BAILEY.

FROM THE HON. C. B. LAWRENCE, EX-CHIEF JUSTICE ILLINOIS SUPREME COURT.

CHICAGO, Dec. 1st, 1878.

CHARLES L. BONNEY, ESQ.:

DEAR SIR: I have examined your book entitled "Railway Law for Railway Men," in which you collect the decisions of the courts of the country bearing upon the duty of c mpanies and their employes toward passengers, and my opinion is it will be a very useful work It shows very great research in collecting the authorities, and its statements of points decided are clearly made. I think it will be useful, not only to railway men, for whom it was prepared, but also very convenient for the practicing lawyers.

Yours, very truly,

C. B. LAWRENCE.

FROM HON. JOHN N. JEWETT, ATTORNEY FOR THE CHICAGO & NORTH-WESTERN RAILWAY.

I very cheerfully concur in the foregoing opinion of Judge Lawrence.

JNO N. JEWETT.

RAILWAY LAW

FOR

RAILWAY MEN.

PASSENGER AGENTS, BAGGAGE MASTERS,

TICKET AGENTS, CONDUCTORS,

ENGINEERS, ETC.

BY

CHARLES L. BONNEY.

CHICAGO:
THE RAILWAY AGE PUBLISHING COMPANY.
1878.

PREFACE.

IN preparing this primer of RAILWAY LAW FOR RAILWAY MEN, it has been my attempt to produce a small and inexpensive, yet comprehensive and explicit pamphlet, for the legal instruction of railway employes.

From a somewhat extensive examination of railway cases and decisions, I do not hesitate to assert, that nine out of every ten cases brought against railway companies for injuries to person or property, might have been prevented if the employe or agent of the corporation, had been better informed regarding the principles of railway law, and more careful in applying them in practice. For example, if the conductor is cognizant of the instances in which the courts have held the ejectment of a passenger unlawful, he would know by analogy that to eject a passenger under similar circumstances would certainly make the company liable in damages.

From the cases I give, it can be seen that an ignorant or willful disregard of the rules of law, by railway employes, costs the companies very large sums of money every year; and that the true safeguard against such losses is a more thorough knowledge of legal rights, duties and responsibilities, and a corresponding fidelity in their application to every day business.

Obviously, it is the policy of the company to instruct its agents and employes.

C. L. B.

CHICAGO, December, 1878.

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THE CARE OF PASSENGERS.

THE DUTIES OF THE COMPANY TO THE PASSENGER, AND OF THE PASSENGER TO HIMSELF.

Without doubt the legal topic most interesting and important to railway corporations and the traveling public, is the question of the extent of care required to be exercised by the employes of railway companies over their passengers, and by the passengers to themselves. The substance of the law as embodied in notable decisions is here given, which will enable railway officials to know by a few moments' examination their general legal liability in the transportation of passengers; and also give the servants and agents of the companies some idea as to the extent of their responsibility in the matter.

1. When a railroad company engages in the business of common carriers it undertakes that the road is in good traveling order and fit for use; and that the engines and carriages employed are road-worthy, and properly constructed and furnished according to the present state of the art; and if an injury results from the imperfection of the road, the carriage, or the engine, the company is liable unless the imperfection was of a character in *no* degree attributable to its negligence.—(N. & C. R. R. v. Messino, 1 Sneed. Tenn., 220.)

2. The true rule is that the carrier shall do all that human care, vigilance and foresight can reasonably do, consistently with the mode of conveyance and the practical operation of the road, to prevent injury to the passenger. (P., C. & St. L. R. R. v. Thompson, 56 Ill., 142.)

3. The railroad company for the proper management of its

affairs, the better to secure the safety of passengers, and to facilitate the business and labors of its agents and officers, has power to make reasonable regulations to guide and govern its agents in the discharge of their duties, and for the conduct of passengers while in its trains. (State v. Chovin, 7 Iowa, 207).

4. A common carrier may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable. (Cal. Code, ¶ 2186, 1876.)

5. The warning to dismiss tortious servants cannot be made too emphatic. Carrier corporations must fulfill their duty to their passengers; and that cannot well be done by retaining in the performance of the duty, servants who abuse their trust by oppressing passengers committed to their care. If railroad companies neglect the warning, they must expect the consequences. (Bass v. C. & N. W. R. R. Wis. Sup. Ct., 1877, RAILWAY AGE, Jan. 31, 1878.)

6. A common carrier must provide every passenger with a seat, and he must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows. (Cal. Code, ¶ 7185, 1876.)

7. A railroad company is bound to be on alert in cold weather, to see that ice and snow do not accumulate upon its premises so as to endanger the life and limb of passengers getting on and off the trains. (Weston v. N. J. R. R. N. J. Ct. of Appeals, 1878, RAILWAY AGE, June 13, 1878.)

8. The case of the Chicago & Alton R. R. Co. v. Pondron, 51 Ill., 333, amply shows the necessity of care on the part of the company. Pondron, who was a passenger, permitted his arm to rest on, and slightly project from the base of an open window, and his arm was broken by a freight car which was standing on a side track. He brought suit, and recovered damages. In deciding this case, the Supreme Court held that the passenger was guilty of slight negligence in allowing his arm to project outside as he did, but that the company was guilty of gross negligence in "permitting a freight train to stand so near the track of a passenger train, as to produce the injuries which did occur." The court said: "It has long been the settled law of this court in such cases, to compare the negligence of both parties, and even if the plaintiff is guilty of negligence which is slight as compared with that of the defendant, he may recover. Galena, etc., v. Jacobs, 20 Ill., 478; Chicago, etc., v. Still, 19 Ill., 499; St. Louis, etc., v. Todd, 36

Ill., 409; Chicago, etc., v. Hogarth, 38 Ill., 370." And in affirming the judgment against the railroad company the court also reviews the cases of Spenser v. the Milwaukee R. R., etc., 17 Wis., 487; Laing v. Colder, 8 Pa. St., 479; see also Rockford, etc., R. R. v. Delaney, 82 Ill., 198; Sterling Bridge Co. v. Pearl, 80 Ill., 251; T. W. & W. R. R. v. O'Connor, 77 Ill., 391; same v. McGinnis, 71 Ill., 346; C. B. & Q. v. VanPatten, 74 Ill., 91; same v. Lee, 68 Ill., 580; C. & N. W. v. Clark, 70 Ill., 276; Ill., Cent. v. Maffit, 67 Ill., 431; Ind. & St. L. R. R. v. Stables, 62 Ill., 313.

9. In the case of the C. & N. W. R. R. Co. v. Fillmore, 57 Ill. 267; Fillmore in attempting at midnight to get on a train at Elgin, fell through an uncovered bridge which was under the control of the railroad company, and was seriously injured. In the court below, a verdict for $25,000 was awarded in favor of the plaintiff. The Supreme Court in remanding the case for new trial on account of excessive damages, declared this doctrine:

"That the bridge (which was in the limits of the city, over a public street, and in the immediate vicinity of the railroad), should have been covered, or so properly protected if uncovered for repairs, as to prevent such injuries. Railway companies should have the proper regard for the safety of the persons whom they invite to their depots, and should omit no act, the omission of which would endanger the lives or limbs of those who seek to ride upon their trains."

10. In the case of Stokes v. Saltonstall, 13 Peters, 190, the United States Supreme Court declares the long established rule—

"That in case of injury of a passenger, the carrier is bound to prove that his agent was a person of competent skill, good habits, and in every respect qualified, and suitably prepared for the business in which he was engaged, and that he acted on the occasion with reasonable skill, and with the utmost prudence and caution. The carrier undertakes that as far as human care and foresight can go, he will transport his passengers safely." (See also Brannon v. Baltimore R. R., 24 Md., 108.)

11. In the case of the Philadelphia & Reading R. R., v. Derby, 14 Howard, 468, the United States Supreme Court declared that the carrier shall be held to the greatest possible care and diligence; that any negligence will deserve the epithet of gross; and that any relaxation of the stringent principles and policy of the law affecting such cases, would be highly detrimental to the public safety."

12. In the case of Graham *et al.* v. Davis *et al.* 4 Ohio, 362, the same doctrine is held in these terms:

"Any negligence by the carrier may well deserve the epithet of gross, and the burden of proof is upon the carrier, to show in case of loss, that no negligence or want of care on his part, contributed to the result."

13. In Sullivan v. the Philadelphia & Reading R. R. Co., 8 Pa. St., 238, it is declared that the carrier is liable, unless he can show that the injury resulted from inevitable accident, or was caused by something against which no human prudence or foresight could provide.

14. In the case of Hegeman v. the Western R. R., 8 Kern. 9, it is held that "the carrier is bound to use the utmost degree of care and skill in the preparation and management of the means of conveyance, and if for want of such care a passenger is injured, the company is liable."

15. In the case of the I. & St. L. R. R. Co., v. Stebbins, 62 Ill., 315, it is held that the carrier should exercise a care for the protection of the passenger commensurate with the danger of the place where the train may be. If it is in a position of unusual peril, it is the duty of the carrier to put forth affirmatively the exercise of extraordinary care. This same position is also held in the case of the I. C. R. R. Co. v. Benton, 69 Ill., 177.

16. If a passenger, holding a ticket entitling him to alight at a particular station, is carried past such station without his consent, and without being allowed a reasonable opportunity to leave the train, such passenger has an action against the company, for whatever damages may have accrued to him by reason of non-delivery at the place for which he was ticketed; and further, if such passenger voluntarily leaps from the train when in rapid motion, or leaves it under circumstances which would necessarily, or probably, render such an act perilous, and receives bodily injury, he has no cause of action. (Ill. Cent. R. R. v. Chambers, 71 Ill., 521.)

17. In England, it seems that railway corporations are held to a more strict liability than in this country, for in Cockle v. London & South Eastern Railway Co., L. R., 7 C. P., 321, a train came to a full stop; no invitation to alight was given, nor any warning not to alight. A passenger got off the train, and in so doing was injured and the company was held liable.

18. In Waller v. London, Brighton & South Coast Railway

Co., 29 L. T. Rep. N. O., 888, there was no suggestion that passengers should keep their seats. A passenger in alighting was injured, and the company was held liable.

19. But the doctrine that the railway company must take extraordinary care of its passengers must not be carried to an unreasonable extreme, as is shown by the following decisions: In the case of The C., B. & Q. R. R. v. Hazzard, 26 Ill., 387. The court says:

"We hold that carriers of passengers for hire are bound to use the utmost care and diligence in providing for the passsenger's safety, by the use of proper and safe means of conveyance; but the care required is not the care, without the exercise of which, accidents might happen; as, for example, after a passenger is on board he would be safer, and less liable to accidents, if locked up in a car, or chained to one of the seats or other fixture, so as to deprive him of locomotion—moving from car to car. This would be the very utmost degree of care and caution, but that is not required."

20. In the Indianapolis & Cincinnati R. R. v. Rutherford, 29 Ind., 82, the court expresses the same view in these words: "The carrier is no more bound to barricade the windows to prevent passengers from extending their limbs outside than he is to lock the doors to prevent them from going from car to car when the train is in motion, and thus voluntarily subjecting themselves to the dangers obviously incident to that act of rashness. The same reason which would require the one thing would also require the other; nay, it is not easy to see why it should not require that the passenger should be so restrained of his liberty in every respect that he could not by any act of his own put himself in any unnecessary danger. The law recognizes no such duty as resting upon carriers of passengers, nor have they any authority to enforce or exercise any such unreasonable and annoying power over those whom they carry. The passengers are not slaves, nor are they absolved from the duty of using ordinary care for their own safety."

See, also, Louisville & Nashville R. R. v. Sickings, 5 Bush, 1; Todd v. Old Colony R. B., 3 Allen, 8; The Pittsburgh & C. R. R. v. McClurg, 7 Am. Law Reg. N. S., 277; Penn. R. R. v. Zebe, 33 Pa. St., 318; P. & C. R. R. v. Andrews, Am. Law Reg., Sept., 1874, p. 566.

21. Care and prudence are required of the passenger as well as of the carrier. This has been decided in many cases, and may be regarded as an established rule. Carriers are not

insurers of life, limb, or against loss, damage or injury, as carriers of goods are, except for acts of Providence or the public enemy; but they are required to use the highest degree of care, diligence, vigilance and skill in the selection of materials, construction of their vehicles and other means of transportation, and for their conduct and management, repairs and preservation of them, with a view to the comfort, safety and transportation of passengers and their baggage; and they are liable for slight neglect or carelessness in any of these particulars, qualified, however, by the reciprocal duty of the passenger, that his want of ordinary care does not cause or contribute to produce the injury. (Galena & Chicago R. R. v. Fay, 16 Ill., 571.)

22. The court in the case of the Ill. Cent. R. R. v. Green, 81 Ill., 19, says:

"A passenger having failed to use ordinary prudence, the railway company ought not to be held liable." And in this case nine authorities are reviewed, as follows: C. & N. W. R. R. v. Sweeney, 52 Ill., 331; Chicago & Alton R. R. v. Gretzer, 46 id., 75; C., B. & Q. R. R. v. VanPathen, 64 id., 511; C., R. I. & P. v. Bell, 70 id., 103; Todd v. Old Colony R. R., 3 Allen, 18; Louisville & Nashville R. R. v. Sickings, 5 Bush., 1; Pittsburgh & C. R. R. v. Andrews, 39 Md., 329; 2 Redfield Am. R. R. cases, 552, in note to McClurg's case; Ind. & Cin. R. R. v. Rutherford, 29 Ind., 82.

23. It is the duty of a passenger to leave the train only when it is not in motion. If he is not given an opportunity to get off at his destination, he is not justified in leaping from the train while it is in motion. (Dougherty v. C., B. & Q. R. R. Ill. Sup. Ct., 1878, RAILWAY AGE, May 16, 1878.)

24. A person riding upon a train of a railroad company without the knowledge of the company's employes, or in collusion with them or otherwise, knowingly in violation of the regulations of the road, cannot recover damages for injuries received while so riding. (Toledo, W. & W. R. R. v. Brooks, 81 Ill., 292.)

The following conclusions seem to be warranted by the above as well as by many other authorities examined:

25. A railroad company may make reasonable regulations for the carriage of passengers.

26. The company must exercise the highest degree of care for the protection of passengers, and the utmost caution and skill in the preparation and management of means of convey-

ance. It must make the utmost exertion to prevent injury to persons or property.

27. The passenger must also be prudent, and if his negligence be such that without it the accident would not have happened, he cannot recover.

28. The company is liable for all injury resulting from a disregard of the rules of law which govern the transportation of passengers and property.

THE PASSENGER'S TICKET.

TRAVELING BY PASS; LIABILITY OF COMPANY; NOTICE TO LIMIT SAME; LIMITED TICKETS, ETC.

Among legal questions discussed, none have given rise to more conflicting decisions than the legality of a contract exempting the railroad company from negligence, printed on the back of a pass or free ticket. An examination of the cases cited will show that some of the courts have held that such a contract excused only slight negligence; others have extended it to ordinary negligence, and some have gone so far as to hold that it covered gross negligence, while a majority of the courts decide that it is illegal, and cannot exempt the company from negligence at all.

29. The contract referred to is usually as follows:

The person accepting this free ticket, in consideration thereof assumes all risk of accident, and expressly agrees that the company shall not be liable under any circumstance, whether of the negligence of their agents or otherwise, for any injury to the person or property.

30. The Illinois Supreme Court said: "The doctrine is settled, in this court, that railroad companies may, by contract, exempt themselves from liability on account of the negligence of their servants, other than that which is gross or willful. (Arnold v. Illinois Central R. R. 8 Ill., 273, and cases cited.)

31. In the case of the Ohio & Miss. R. R. v. Shelby, 47 Ind., 485, the subject is fully treated, and the many conflicting decisions more fully considered, than in any of the other cases which

came under my observation. I below quote, not only the doctrine of the case, but the numerous authorities on both sides of the question which were considered by the court:

"It is a rule of law that a common carrier cannot by contract exempt itself from liability for loss resulting from any negligence on its part. It is well settled that in the case of a person riding on a free pass, carriers of passengers are held to the same liability as for those paying fare.

"The following cases hold that a carrier may be exempted from liability for a loss occasioned by ordinary negligence: Wells v. N. Y. C. R. R., 24 N. Y., 181; Perkins v. same, 24 N. Y., 196; Smith v. same, 24 N. Y., 222; Bissell v. same, 25 N. Y., 442; Poucher v. same, 49 N. Y., 263; Ashmore v. Penn. R. R., 4 Dutcher, 180; Kenney v. N. J. C. R. R., 3 Vroom, 407; Hall v. N. J. R. R., 15 Conn., 539; Peck v. Weeks, 34 Conn., 145; Lawrence v. N. Y. Cent. R. R., 36 Conn., 63; Kimbal v. Rutland R. R., 26 Vt., 247; Mann v. Birchard, 40 Vt., 326; Adams Ex. Co. v. Haynes, 42 Ill., 89; Am. Ex. Co. v. Perkins, 42 Ill., 458; Ill. Cent. v. Adams, 42 Ill., 474; Hawkins v. Gt. West. R. R., 18 Mich., 427; B. & O. R. R. v. Brady, 32 Md., 333; Levering v. Union Trans. Co., 42 Mo., 88.

"Many of the above cases were decided by divided courts. Some of them limit the exemption to cases of slight negligence, some of them to ordinary negligence, and a few of them extend the doctrine to cases of gross negligence.

"We now proceed to cite cases holding the opposite doctrine, and fully sustaining the recent decisions in this court: Cole v. Goodwin, 19 Wend., 251; Gould v. Hill, 2 Hill, N. Y., 623; Dorr v. N. J. Nav. Co., 4 Sandf., 136; Stoddard v. Long Is. R. R., 5 Sandf., 180; Parsons v. Montrath, 13 Barb., 353; Moore v. Evans, 14 Barb., 524; Laing v. Colder, 8 Pa. St., 479; Camden & Amboy R. R. v. Baldauf; 16 Pa. St., 67; Goldey v. Penn. R. R., 30 Pa. St., 242; Powell v. Penn. R. R., 32 Pa. St., 414; Penn. R. R. v. Henderson, 51 Pa. St., 315; Farnham v. Camden R. R., 55 Pa. St., 53; Am. Ex. Co. v. Sands, 55 Pa. St., 140; Empire Trans. Co. v. Wamentha Oil Co., 63 Pa. St., 14; Jones v. Voorhees, 10 Ohio, 145; Danson v. Graham, 2 Ohio St., 131; Graham v. Davis, 4 Ohio St., 362; Wilson v. Hamilton, 4 Ohio St., 722; Welsh v. P., Ft. W. & C. R. R., 10 Ohio St., 65; C., P. & A. R. R. v. Curran, 19 Ohio St., 1; Cin. R. R. v. Pontius, 19 Ohio St., 221; Knowlton v. Erie R. R., 19 Ohio St., 260; Fillebrown v. Grand Trunk R. R., 55 Me., 462; Sager v. Portmouth R. R., 31 Me., 228; School District v. Boston R. R., 102 Mass., 552; Flinn v. Phil. R. R., 1 Hous. Del., 469; Orndorff v. Adams Ex. Co., 3 Bush. Ky., 194; Swindler v. Hilliard, 2 Rich. S. C., 286; Berry v. Cooper, 28 Ga., 543; Steele v. Townsend, 37 Ala., 247; South. Ex. Co. v. Crook, 44 Ala., 468; Whiteside v. Thurlkill, 20 Miss., 599; South. Ex.

Co. v. Moon, 39 Miss., 822; N. O. Ins. Co. v. N. O., J. & G. R. R., 20 La. Ann., 302.

"The ruling of the Supreme Court of the United States has been uniformly against the validity of all contracts to exempt a carrier from liability from loss resulting from any negligence. The following are leading cases: N. J. St. Nav. Co. v. Merchants' Bank, 6 How., 383; Phil. R. R. v. Derby, 14 How., 486; Steamboat New World v. King, 16 How., 469; The York Co. v. Ill. Cent. R. R., 3 Wal., 107; Walker v. West. Trans. Co., 3 Wal., 150; U. S. Ex. Co. v. Kountze, 8 Wal., 342; N. Y. Cent. R. R. v. Lockwood, 17 Wal., 357. Judgment for Shelby is affirmed with costs."

32. Among other cases than those reviewed by the above court, which uphold the contract, may be mentioned: Ill. Cent. R. R. v. Read, 37 Ill., 510; Nolton v. Western R. R., 15 N. Y., 450; Boswell v. Hudson R. R. R., 5 Bosw. N. Y., 703. Additional cases contra: Ohio & Miss. R. R. v. Muhling, 30 Ill., 23; Rose v. Des Moines Valley R. R., 39 Iowa, 246, and cases cited; Todd v. Old Colony R. R., 3 Allen, 21; Gillenwater v. Madison & Ind's R. R., 5 Ind. 340; Mobile & Ohio R. R. v. Hopkins, 41 Ala., 500.

33. As it is absolutely necessary in carrying stock that the person who has charge of it should be carried by the company, the price paid for freight includes the cost of transporting the drover, who is not a gratuitous but a paying passenger, and the word "free" is only true so far as that the conductor is not entitled to charge him separately for his passage. (Penn. R. R., v. Henderson, 51 Pa. St., 331; Smith v. N. Y. C. R. R., 24 N. Y., 222; Rooth v. N. E. R. R., 2 Ex. Law R., 173; Ohio & Miss. R. R. v. Shelby, 47 Ind., 471; C., P. & A. R. R. v. Curran, 19 Ohio St. 11.)

34. In the case of Cheney v. the Boston & Maine R. R., the question involved was whether one who purchases a ticket, entitling him by the rules regulating the tariff of fares, to a continuous passage, thereby availing himself of the reduction in price allowed to such passengers, can insist upon being taken up as a way passenger, at such stations as he may elect to stop at, he having voluntarily abandoned the train that went through. The plaintiff had purchased such a ticket, not knowing it to be a through one, and with the intention of stopping over. He was fully apprised of the different rates of fare and the rules applicable to way passengers by the conductor, who offered to refund the money he had paid for his ticket deducting the

usual fare for the distance he desired to go before stopping over, which the plaintiff refused to accept. "In the opinion of the court this was all that the defendants were required to do; and as the plaintiff declined this offer, and thereupon left the train to stop over, he voluntarily relinquished his passage through by a continuous train, for which he held a ticket, and whatever loss he has sustained was occasioned by his own act, and occurred under such circumstances as to preclude him from all claim for damages for any default of the company in the matter. Nor can he sustain any legal claim to recover back the sum paid for his first ticket, or any part thereof. The offer to that effect was refused by him. The judgment is for the defendants. (11 Metc., Mass., 121.)

35. The notice on a ticket, "good for this day and train only," is proper, and the condition is sufficient to justify a railroad company in refusing to carry a passenger on such a ticket after the expiration of the time limited by such condition. (Shedd v. Troy & Boston R. R., 40 Vt., 88.)

36. A ticket which is dated, and bears upon its face a printed statement, "good for two days after date," ceases to be good after the expiration of the two days. (Boston & L. R. R. v. Proctor, 1 Allen, 267.)

37. Where a railway company sells a through ticket to any point, and fails to give the purchaser passage within a reasonable time, it is liable for any lawful expense that may attend such purchaser in pursuing his journey otherwise than by rail. (Payter v. Gt. West. R. R., Hereford Co. Ct., Eng., 1878, RAILWAY AGE, Sept. 5, 1878.)

[Other decisions regarding tickets will be found in the chapter entitled EJECTMENT OF PASSENGERS.]

CONCLUSIONS.

38. A common carrier cannot lawfully stipulate for exemption from responsibility for the negligence of itself or its servants.

39. A drover traveling on a pass for the purpose of taking care of his stock on the train is a passenger for hire.

40. The notice on the face of a ticket that it is "good only for this train and day," "good for two days," "good for a continuous trip," "good for six months," or the like, is reasonable and may be enforced.

THE EJECTMENT OF PASSENGERS.

THE DUTY TO PURCHASE TICKETS; KEEP TICKET OFFICE OPEN; PROCURE STOP-OVER CHECKS; OF LOST TICKETS; DRUNKENNESS, ETC.

Perhaps no act of railway employes has given rise to more harrassing and bitter litigation, with expensive results, than the ejectment of passengers for real or assumed failure to comply with the lawful requirements of the companies; and conductors and other train men need to be better informed than they generally are as to their rights and duties in this important matter. To give the voice of the courts on this question, a careful search has been made through a very large number of authorities, which present the following examples and deductions:

41. Every one riding in a railway car is presumed to be there lawfully as a passenger, having paid, or being liable when called on, to pay his fare, and the onus is on the carrier to prove affirmatively that he was a trespasser. (Penn. R. R. v. Brooks 57 Pa. St., 346.)

42. So long as a passenger shall comply with the reasonable regulations of the company, he has a right to remain in the cars, and to be carried over the road. If while thus complying, the conductor, officers, agents, or servants of the company, eject him from the cars, they will be liable in damages for all injuries sustained. (Iowa v. Chovin, 7 Iowa, 207.)

43. If a passenger who has paid his fare and who behaves

himself well, is removed by the servant of the company having charge and control of the train, the company cannot escape the responsibility for this unlawful act. (Dow v. Lewis, 4 Gray, 468.)

44. A railroad company has a right to make a regulation reserving certain cars for the use of ladies and gentlemen accompanying them, and may by an agent or servant remove an intruder therefrom, using such force as may be necessary to effect that result. (N. Y. C. R. R. v. Peck, N. Y. Ct. Appeals, RAILWAY AGE, Dec. 13, 1877.)

45. If any passenger shall refuse to pay his fare it shall be lawful for the conductor and the servants of the company to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling house, as the conductor shall elect on stopping the train; *provided* no passenger shall be put off on any bridge or in any dangerous place. (N. J. Statutes, p. 932, sec. 25; Ark. Stat., sec. 4,956; Mich. Laws, ¶ 2,333.)

46. If any passenger refuses to pay fare, or exhibit or surrender his ticket when reasonably requested so to do, the conductor and employes of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling house, on stopping the train. (Cal. Code 1876, ¶ 5,487.)

47. In the case of the Pullman Palace Car Co. v. Reed, 75 Ill., 125, Reed had purchased a ticket for a berth in a sleeping car. The porter had seen the ticket and shown him his seat, after which the ticket was lost. Reed then procured from the agent who sold the ticket a memorandum which stated that the bearer had purchased one, but the conductor would not accept this, saying that his orders were to collect money, a pass, or a ticket. Reed refused to pay either, and was put out of the Pullman into an ordinary car, the conductor using no violence or rudeness. The court held: It is well recognized law that the company may lawfully require those seeking to be carried to purchase tickets when convenient facilities to that end are afforded by the carrier, and to surrender them, after securing their seats in the car, when required by the person in charge of the transportation. The reasonableness of these rules cannot be questioned.

The court then continued: "We understand that the employe was simply endeavoring to comply with a reasonable regulation of the company which employed him, but in so doing he

erred in judgment on a question about which he might honestly be mistaken.

"Under the circumstances we are of the opinion that Reed is only entitled to the price he paid for his ticket and a reasonable compensation for the trouble and inconvenience he suffered by being deprived of his berth in the sleeping car."

(But see Sec. 59.)

48. A regulation made by a railroad corporation, requiring passengers to exhibit their tickets when requested to do so by the conductor, and directing the ejection from its cars of those who refuse so to do, is a reasonable and proper one. The passenger must conform to such regulation or forfeit his right to be carried further. (Hibbard v. N. Y. & Erie R. R., 15 N. Y., 455.)

49. A rule or custom of a railroad company requiring passengers, soon after starting, to surrender their passage tickets to the conductor, and receive his checks in place of them, is reasonable. The contract on the part of the railway company is that they will carry the passenger, provided he surrenders his ticket to the conductor when it is demanded, and the passenger will not be entitled to his passage in the cars without the surrender of his ticket. (Northern Railroad v. Page, 23 Barb., 130.)

50. A passenger's refusal to deliver his ticket to the conductor when it is demanded will justify the latter in exacting from him his fare in cash, and on his refusal to pay his fare he may be expelled from the cars. (Northern Railroad v. Page, 22 Barb., 130.)

51. The removal of a passenger by a conductor for refusing on demand to produce a ticket or pay fare for his passage is a proper exercise of the company's right, for which, when exercised in such a manner as to do no unnecessary injury to the person removed, the company is not liable in damages. (Shelton v. L. S. & M. S. R. R., 29 Ohio St., 218.)

52. As between the conductor and the passenger, and the right of the latter to travel, the ticket produced must be conclusive evidence of a right to a seat. If by mistake the ticket agent has given a wrong ticket the passenger must pay fare, or be removed from the car, and his remedy against the company would be for a breach of the contract, and not for ejectment. (Fredrick v. M., H. & O. R. R., Mich. Sup. Ct., 1877. RAILWAY AGE, Jan. 17, 1878.)

53. If a passenger has forfeited his right to ride by his

improper conduct, and the train has been stopped for the purpose of ejecting him, it is for the company or its agents to say whether he should be retained or not, and they are not bound to receive him after he has been ejected, even though he afterwards tenders the fare. (Hibbard v. N. Y. & Erie R. R., 15 N. Y., 462.)

54. The ejectment of a passenger should be made at or near a regular station. (C., B. & Q. R. R. v. Parks, 18 Ill., 465; Conn. Stat., sec. 65, p. 330; Cal. Code, ¶ 2,188.)

55. Where a party insists upon riding upon a railroad train after being once expelled therefrom on account of his refusal to show a ticket or pay his fare, he cannot recover damages for being again expelled at a place not a regular station. (C., B. & Q. R. R. v. Boger, Ill. App. Ct., 1878, RAILWAY AGE, May 2, 1878.)

56. The uniform discrimination in the established tariff, of five cents in favor of those passengers who purchase tickets over those who pay after taking seats in the cars, is so clearly just and reasonable, and so manifestly for the interest of the railroads to bring into operation the only safeguard they can have of the honesty and fidelity of their conductors, that its legality is not to be doubted, and any passenger who, having neglected or refused to purchase a ticket, shall refuse to pay the additional fare thus established, may rightfully be expelled from the cars in a proper manner. (Hilliard v. Gould, 34 N. H., 241; see also State v. Gould, 53 Maine, 281.)

57. In the case of the C., B. & Q. R. R. v. Parks, 18 Ill., 465, the court said: "We do not think it unreasonable or unjust that the company should charge more for passengers who neglect to get their tickets, and in consequence compel the conductor to collect their fares in the cars. This is a reasonable penalty for the neglect of the passenger, and a just compensation to the company for the additional inconvenience to which they are subjected by being compelled to receive the fare by the hand of the conductor.

But to justify this discrimination every reasonable and proper facility must be afforded the passenger to procure his ticket. The facility having been afforded, if the passenger neglects to avail himself of it, and refuses to pay the additional rate, he may be ejected.

58. In the case of Crocker v. the New London, W. & P. R. R., 24 Conn., 263, the railway company had a regulation that the fare from N. to N. L. should be fifty cents if a ticket was pur-

chased, or if paid on the cars the fare would be fifty-five cents. The passenger attempted to procure a ticket, but the office was closed. When the conductor demanded fare, the passenger, stating the facts of the case, offered fifty cents, and refused to pay more. The conductor consequently ejected him. In deciding the case the court held that the passenger refusing to pay the fifty-five cents the conductor had the right to eject him from the car, using no unnecessary force for that purpose.

59. In the case of the St. Louis & Alton R. R. v. Dalby, 19 Ill., 353, the railroad company had a regulation that passengers not purchasing tickets would be charged one cent per mile extra. The passenger applied at the ticket office for a ticket. The agent having sold all like the one desired gave the passenger a paper on which he wrote:

The bearer applied for ticket, and tickets are all out.

W. RANKIN, Agent.

Elkhart, April 4, 1857.

When the conductor demanded fare the passenger presented the memorandum of the ticket agent, explained the same, and refused to pay the extra rate. He was ejected, sued for damages, and recovered verdict in the court below. The supreme court said: "We are aware that in the case of Crocker v. the New London R. R. Co., (the case last mentioned,) it was held that the agent might close his office at any time; but this seems to us like too much trifling with the public; the company must afford reasonable facilities to get tickets, and it must be the fault of the passenger, and not of the company, to authorize the extra charge for the want of a ticket. The judgment must be affirmed."

60. In the case of the St. Louis & Alton R. R. v. South, 43 Ill., 176, the same court held that the ticket office need not be kept open until the actual departure of the train, but only till the time for departure as fixed by the advertised rules or time table.

61. In the case of Palmer v. Charlotte, Col. & Aug. R. R., 8 S. C,. N. S., 580, the plaintiff was a passenger on the cars of the defendant, under a contract to be carried from Charlotte, N. C., to Augusta, Ga., with the privilege of stopping at Columbia. He had a through ticket from New York to Savannah, with coupons for the different roads—for defendant's road there being two—one from Charlotte to Columbia, the other from Columbia to Augusta. On the passage from Charlotte to Columbia conductor W. detached both coupons, giving plaintiff a conductor's check, which by the rules of the company was good

only for that trip. Plaintiff stopped at Columbia, and next day took the train for Augusta. On this train conductor J. demanded plaintiff's ticket, and on exhibiting the conductor's check and his ticket to Augusta without the coupon, the conductor informed him that they were insufficient, and that fare must be paid or the passenger must leave the car. He failed to pay, and was ejected. It was held that the ejection was unlawful and that the company was liable, the passenger having a special contract to stop at Columbia.

62. In the case of Jerome v. Smith, 48 Vt., 230, the passenger had purchased a ticket with coupons attached. One conductor detached and retained one of the coupons, giving in its place a "conductor's check." Before the passenger arrived at his destination another conductor took charge of the train, whereupon the passenger looked for his "conductor's check," but could not find it. The second conductor demanded the production of the "conductor's check" or the payment of fare. The passenger not finding the check refused to pay, and was ejected at a station. The court held that the ejection was lawful.

63. A father and mother with six children, the eldest fifteen years of age, were on the train together. The father offered two tickets to the conductor, who demanded half fare for the older three, offering to allow the younger three to go free. This was more liberal than the rules of the company allowed, for they prescribed half fare for all children between the ages of five and twelve. The father remained firm, and the family were put off, the conductor declaring that the older three children must pay fare or leave the train. They were taken to Chicago afterwards without paying additional fare, having been delayed about twelve hours by the occurrence. No personal violence was resorted to by the conductor.

The Supreme Court of Illinois held that the conductor did right in ejecting them from the train. (Pitts., Cin. & St. L. R. R. v. Derwin, Ill. Sup. Ct., 1878, RAILWAY AGE, March 14, 1878.

64. In the case of the P., C. & St. L. R. R. v. Hennigh, 39 Ind., 509, the first conductor took up the passenger's ticket and gave no "conductor's check." The second conductor ejected the passenger, and the company was held liable, as it was not the fault of the passenger.

65. In the case of Stone v. C. & N. W. R. R., Iowa Sup. Ct., 1877, (THE RAILWAY AGE, Dec. 27, 1877,) Stone was a passenger, having a through ticket with coupons attached. The

conductor detached the coupons, giving a "conductor's check." Stone desired to "stop over," and did so, but did not obtain a "stop-over check." When he took the next train he presented the ticket and check, and was informed that it was insufficient, and that he must pay fare, which he refused to do. He was ejected, and the court held that as he refused to pay, he was rightfully ejected.

66. A drunken person has no right to a passage while in that condition, but slight intoxication is not sufficient ground for refusing a person passage, although his behavior may not in all respects be strictly becoming. (P., C. & St. L. R. R. v. Vandyke, Ind. Sup. Ct., 1877, RAILWAY AGE, Jan. 24, 1878.)

67. It is the duty of a conductor to remove an intoxicated person from a train. And if such passenger is afterward killed by another train the expulsion is not such proximate cause of the death as will make the company liable, provided reasonable prudence is exercised, considering time, place, circumstances, and the condition of the drunken man himself. (P., Ft. W. & C. R. R. v. Valleley, Ohio Sup. Ct. 1878, RAILWAY AGE, April 11, 1878.)

68. One Call brought an action against the company for wrongfully ejecting him from a car. It appeared that the rate fixed by the company was higher than that allowed by law. Plaintiff tendered the legal rate, and, refusing to pay more, he was ejected from the car, but without rudeness or unnecessary violence. It also appeared that the plaintiff when he took passage knew the company's established rate, intended to refuse to pay it, and expected to be ejected and bring his action for damages in order to test the right of the company to maintain its rates. It was held that the plaintiff was entitled to compensatory damages for being ejected, and that it was competent for the company, to prevent the recovery of punitory damages, to give in evidence subsequent declarations of the plaintiff tending to prove that his object in taking passage on the train was to make money by bringing suit against the corporation. (C., H. & D. R. R. v. Call, Ohio Sup. Ct., RAILWAY AGE, Dec. 13, 1877.)

69. The purchaser of an excursion ticket which contains a stipulation that it shall be "good for one passage on the day sold only," cannot lawfully claim a passage under it at any time except the day designated therein.

A passenger insisting upon a passage by the force of a spent ticket, and refusing to pay fare may be ejected; and having been expelled has no right to re-enter the cars upon producing, after

his expulsion, a regular ticket, which while in the cars he had kept back, representing the spent ticket as his sole passport. (State v. Campbell, 32 N. J. L., 309. See also Johnson v. The Concord R. R., 46 N. H., 213.)

70. In the case of Keeley v. Bost. & M. R. R. the plaintiff in going from Boston to Portland offered the conductor a ticket which read in the opposite direction. The company refused to carry him on this ticket, and ejected him from the car. He sued for damages, but was non suited, the court deciding that a ticket with the words "Portland to Boston" on it does not entitle the holder to a ride from Boston to Portland, although the holder has been permitted to take such rides on similar tickets over the same railroad before, and a conductor on another train, at another time on the same road, gave his opinion to the holder that the ticket would be good for a passage either way. (Maine Sup. Ct., 1878, RAILWAY AGE, Oct. 24, 1878.)

71. In the case of Thorp v. N. Y. C. R. R., N. Y. Sup. Ct., 1878, the plaintiff recovered a verdict and judgment of $1,000 against defendant for abusive treatment from a porter in a Wagner drawing room car, which plaintiff had entered to find a seat, the other coaches of the train having no vacant ones. Said porter, after the train was in motion, demanded twenty-five cents extra fare for the seat in that car, which was refused, plaintiff saying that he would go into the other cars as soon as there was a vacant seat, and declined to leave the drawing room car while the train was moving. The porter thereupon used violent and threatening language, and finally attacked plaintiff, tore his clothes and beard and bruised and injured him. The court held:

1. A drawing room car is under the control of the company owning the train to which it is attached, and such company is liable for the acts of employes thereon.

2. A passenger entering a drawing room car for the purpose of finding a seat when none can be had in the regular passenger coaches is not a trespasser, unless he refuses to pay extra fare on demand, and unreasonably declines to leave the car.

3. Plaintiff was on defendant's train, and entitled to a seat. It was not plaintiff's duty to ask the conductor for a seat before passing into the Wagner car. The plaintiff was wrongfully there only when he refused upon demand to pay extra fare, and unreasonably declined to leave the car. Judgment affirmed.

Although this decision was given by an inferior tribunal, and with one dissenting opinion, still it shows the tendency of the courts, and indicates the necessity of care on the part of the employe.

(See RAILWAY AGE, May 2, 1878.)

72. A person was ejected from a freight train after tendering the regular fare to the conductor; but, by the rules and regulations of the company, passengers were prohibited from riding on freight trains without having first procured a "freight train order," a "round trip ticket," a "thousand mile ticket," or a pass. He neglected to comply with such regulation.

The court held:

The conductor had the right, and it was his duty under the regulation, to put him off the train, using no unnecessary force in doing so. (Faulkner v. Ohio & Miss. R. R., Ind. Sup. Ct., 1877, RAILWAY AGE, Dec. 27, 1877.)

CONCLUSIONS.

73. A person in a railway car is presumed to be there lawfully as a passenger, and he should not be ejected until it clearly appears that he is an intruder, or has forfeited his right to ride.

74. The company may reserve cars for ladies, and may eject an intruder therefrom.

75. A passenger must exhibit his ticket when so requested by the conductor, or he may be removed from the car.

76. An ejectment from the car should be made at or near a regular stopping place, and with as little force as is necessary to effect the result.

77. A passenger must surrender his ticket when demanded by the conductor, or he may be ejected; but if the conductor takes the ticket before arriving at destination he should give the passenger a conductor's check, or some other evidence of his right to ride.

78. It seems that if a passenger persists in his refusal to pay fare until actually ejected, he forfeits his common law right to re-enter the car, even though he afterwards tender the demanded fare.

79. A railroad company has the right to make a moderate discrimination in the rate of fare between those who purchase tickets and those who do not. If a passenger has not procured a ticket, he must pay the additional rate or may be removed from the train.

80. A railroad company must afford reasonable facilities for procuring tickets; but the ticket office need not be kept open after the advertised time for the train to depart.

81. A drunken person has no right to a passage, and a disorderly or drunken passenger may be put off.

82. A railroad company cannot charge more per mile for transportation than is allowed by the state statutes, but the *statute of one state* is not law in another state.

83. A *passenger* holding an excursion or limited ticket must

conform to the limit specified on the face of the ticket, or he may be ejected.

84. A ticket reading from one place to another does not entitle the holder to passage in the direction opposite to the reading of the ticket.

85. In all cases of ejectment the conductor should obtain the names of several passengers who witnessed the removal, that they may testify to his just proceeding should suit be brought against him or the company.

THE PASSENGER'S BAGGAGE.

WHAT IT IS; THE CARE OF IT; TO BE CARRIED WITHOUT EXTRA CHARGE; CHECKS; LOSS, ETC.

Almost as many questions have arisen regarding baggage as tickets or ejectment, but it is quite impossible in this brief work to give extracts from, or refer to, all the cases which have received the attention of the courts. A few of the principal questions will be found embodied in the citations below.

86. Baggage is only such apparel and other articles as are necessary for a person's comfort and convenience whilst away from home, with the necessary sum of money for his expenses. These usually constitute baggage, and both parties so understand, when it is received by the company. (Cin. & Chic. Air Line R R. v. Marcus, 38 Ill., 223.)

87. The quantity and character of baggage must depend much upon the condition in life of the traveler, his calling, habits, tastes, the length or shortness of his journey, and whether he travels alone or with a family. (Dibble v. Brown, 12 Ga., 226. See also Hutchings v. Western & Atlantic R. R., 25 Ga., 64.)

88. The articles need not be such as every man deems essential to his comfort, for some men may carry nothing or very little with them, others consult their convenience by carrying many things. Nor is the rule confined to wearing apparel, brushes, razor, writing apparatus, and the like, which most persons deem indispensable. If one has books for his instruction or amusement, carries a gun or fishing tackle, they would un-

doubtedly fall within the term baggage, because they are usually carried as such. Samples of merchandise are not baggage within the common acceptation of the term. (Hawkins v. Hoffman, 6 Hill, N. Y., 586.) And the company is not liable for its loss. (Stimson v. Conn. R. R. R., 98 Mass., 84; Belfast & B. R. R. v. Keye, 9 H. L. Cases, 556.)

89. It may be difficult to define with technical precision what may be legitimately included in the term baggage, but it may be safely asserted that money, except what may be carried for the expenses of traveling, is not thus included, and especially a sum which is taken for the mere purpose of transportation. (Orange Co. Bank v. Brown, 9 Wend., N. Y., 95.)

90. A bed, pillows, bolster and bedquilts belonging to a poor man, who is moving with his wife and family, may properly be called baggage. (Oulmit v. Henshaw, 35 Vt., 622.)

91. A revolver is baggage. (Davis v. Mich. South. & North. Ind. R. R., 23 Ill., 281.)

92. The traveling expenses are a part of the baggage, and the railroad company is liable for their loss. (Duffy v. Thompson, 4 E. D. Smith, 179.)

93. It is well settled that the company is liable for money, required for personal use and traveling expenses, contained in the passenger's trunk. (Hickox v. The Naugatuck R. R., 31 Conn., 284.)

94. A gold watch and chain and finger rings, which were deposited in a trunk, were held a part of the baggage, and the company liable for their loss. (McCormick v. Hudson R. R. R., 4 E. D. Smith, 192, Woodruff, J., dissenting.)

95. The passenger is not bound to give notice of the contents of his trunk, unless particular inquiry be made by the agent of the company. But it must be fully understood that money cannot be considered as baggage except such as is bona fide taken for traveling expenses and personal use, and to such reasonable amount only as a prudent person would deem necessary and proper for such purpose. But money intended for trade, or business or investment, or for transportation, or any other purpose than as above stated, cannot be regarded as baggage. (Judson v. Fall R. R. R., 5 Cush. Mass., 74.)

96. When a person pays for his passage over the road both parties understand that it includes payment for his baggage,

usually not exceeding a special weight. (Cin. & Chic. Air Line R. R. v. Marcus, 38 Ill., 223.)

97. A reasonable amount of baggage, by custom or the courtesy of the carrier, is considered as included in the fare of the person. (Orange Co. Bank v. Brown, 9 Wend., 85; Hawkins v. Hoffman, 6 Hill, 590.)

98. If a passenger has paid the price of a passenger ticket he has the right to have his baggage carried. (Hutchings v. Western & Atlantic R. R., 25 Ga., 64.)

99. It is well settled that the reward for carrying the baggage is included in the passenger's fare. (Ind. & Cin. R. R. v. Cox, 29 Ind., 361; Candee v. Penn. R. R., 21 Wis., 587; Wilson v. Grand Trunk R. R., 56 Me., 60; Becker v. Gt. East. R. R., 5 Q. B. Law, 541.)

100. A check should be given for each parcel of baggage entrusted to the carrier for transportation. Every railroad corporation when requested shall give checks or receipts to passengers for their ordinary baggage when delivered for transportation on any passenger train, which baggage shall in no case exceed one hundred pounds in weight for each passenger, and shall deliver such baggage to any passenger upon the surrender of such checks or receipts. Any corporation willfully refusing to comply with the requirements of this section shall pay a fine of not less than $10 or more than $100, which may be recovered before any court of competent jurisdiction, in an action of debt in the name of the people of the state of Illinois, for the use of the person aggrieved. Provided, that no passenger shall be entitled to receive checks or receipts for any baggage unless he shall have paid or tendered the lawful rate of fare for his transportation to the proper agent of such corporation. (Ill. Stat., chap. 114, sec. 78.)

101. A check shall be fixed to every parcel of baggage when taken for transportation by the agent or servant of such corporation, if there be a handle, loop, or fixture so that the same can be attached upon the parcel of baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action. (Mich. Laws, sec. 2,003; N. Y. Statutes, Banks Brothers, vol. 2, p. 540; N. J. Stat., p. 933, sec. 27.)

102. If the company does in fact receive the baggage of a

passenger, it receives it subject to the requirements of the law, and if such company refuse to give a check it must be subjected to the penalty prescribed by the statutes. (Commonwealth v. Conn. R. R. R., 15 Gray, 450.)

103. It shall be the duty of every railroad company chartered by this state to receive any trunk or baggage, which the regulations of such company allow to be transported with every passenger, immediately upon the exhibition of a ticket over the road of the company, and immediately upon receiving such trunk or baggage to issue to the owner thereof, or his agent, a check for the same.

It is the further duty of said company to safely keep such trunk or baggage until the owner or his agent shall demand the same. (Miss. Code, sec. 2,910.)

104. The delivery of a check is prima facie evidence that the company have the baggage. (Davis v. Mich. South. & North. Ind. R. R., 22 Ill., 278; Ill. Cent. R. R. v. Copland, 24 Ill., 332; Dill v. South Carolina R. R., 7 Rich. Law S. C., 158.)

And it is not necessary that the owner of baggage should go by the same train in order to recover for its loss. (Curtis v. Del., Lack. & West. R. R., N. Y. Ct. Appeals, 1878, RAILWAY AGE, Nov. 21, 1878. See also Wilson v. Grand Trunk R. R., 56 Me., 60.)

There has been some question as to the amount of baggage a passenger could carry without additional charge. Many of the railroads have regulations as to the limit in weight, others as to the limit in value, and some have both. This has been made known to the traveler by a printed notice on the reverse of the passenger ticket or baggage check. The courts, in considering the effect of these notices, have said:

105. "There is no presumption of law that a passenger on a railroad has read a notice limiting the liability of the railway corporation for baggage, printed on the back of a check delivered to him, having on its face the words, "Look on the back," and also printed on a placard posted in the cars and containing other notices which he had read." (Malone v. Boston & Worcester R. R., 12 Gray Mass., 388.)

106. Again in Massachusetts, where on the back of a ticket was printed:

"*NOTICE.* Passengers are not allowed to take, nor will these

companies be responsible for baggage, if it exceeds fifty dollars in value, unless freight on any addition thereto be paid in advance; and this notice forms part of all contracts for transportation of passengers and their effects."

It was held that "receiving the ticket raised no legal presumption that the passenger had the requisite notice, and that it was a question of fact whether she knew the limitation before she started on her journey." (Brown v. The Eastern R. R., 11 Cush. Mass., 97.)

107. In Iowa such limitations are prohibited by the statute. Sec. 2,184 of the Iowa Code says:

"No contract, receipt, rule or regulation shall exempt any corporation or person engaged in transporting persons for hire from the liability of common carrier, or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made and entered into."

108. But in some states the limit is fixed by statute. In Pennsylvania it is one hundred pounds in weight and three hundred dollars in value. (Brightlys Purdons Dig., p. 1,228, sec. 82.)

109. In Illinois the amount of baggage is limited by the statutes to one hundred pounds for each passenger. (Statutes of 1877, p. 744, sec. 78.)

110. The liability of the carrier for the loss of or injury to the baggage of the passenger is too well settled to admit of argument.

Any railroad company whose agents or employes shall carelessly or willfully injure, or allow to be injured or lost, any trunk or baggage, either by improper handling or otherwise, shall be liable for damages in a sum not less than double the amount of actual damage. (Miss. Code, sec. 2,911.)

111. Railroad companies are, in respect to baggage, common carriers, and are liable for the same unless excused by the act of God, or enemies of the country. (Dill v. South Carolina R. R., 7 Rich. Law S. C., 158.)

112. In the case of the Ind. & Cin. R. R. v. Cox, 29 Ind., 360, the company received the passenger's baggage, and gave a *check on* which was stamped, "In consideration of free carriage *its value is agreed* to be limited to one hundred dollars." *The passenger had* paid fare. His baggage was lost, and judg-

ment was given against the company for its full value, $167.50. This verdict was affirmed by the Supreme Court.

113. In the case of Warner v. Burl. & Mo. R. R., 22 Iowa, 170, the passenger purchased a ticket from O. to F. Finding, when about to start, his trunk locked up in the baggage room of another company, whose check he held, he gave his check to defendant's station agent, who told plaintiff to proceed to F., and he would obtain and forward his trunk by the next train. Plaintiff proceeded to F., and three days after his trunk arrived, which had been rifled of its contents by burglars while in the common passenger room where it had been stored instead of in the baggage room.

The court held: That the consideration paid for carrying the owner was sufficient for transporting the trunk, whether on the same or on a subsequent train, and the company were liable for the loss.

114. The company is liable for injury to baggage until its safe delivery to the owner. It is bound not only to carry it safely to its place of destination, but there to deliver it in a reasonable time and in a reasonable manner. (Cary v. Cleve. & Toledo R. R, 29 Barb., 35.)

115. If the company's agent agrees to retain baggage until it is sent for, the company is liable as common carrier, until the baggage is delivered or tendered to the owner. (Curtis v. Avon, Gen. & Mt. M. R. R., 49 Barb., 148.)

116. A company is liable for loss of baggage in a sleeping car when the same is left in the custody of the porter, or if the owner is informed by the porter that it will be safe to leave it unguarded. (Kinsley v. L. S. & M. S. R. R., Mass. Sup. Ct., 1878, RAILWAY AGE, Aug. 8, 1878.)

117. Whenever any trunk, carpet bag, valise, bundle, package, or article of property, transported or coming into the possession of any railroad or express company, or any other common carrier, shall remain unclaimed, and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same has been consigned cannot be found upon diligent inquiry, or being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such articles at public auction, after giving the owner or consignee

fifteen days notice of time and place of sale through the post office and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the surplus, if any, shall be paid to the owner or consignee on demand. (Ill. Stat., chap. 141, Sec. 1.)

118. In Michigan the time is expressed at one year instead of six months, and the publication is a little different. (See Mich. Laws, ¶ 2,350.)

CONCLUSIONS.

119. Baggage is wearing apparel and such other articles as are carried for the traveler's use or instruction; not articles of trade or for pecuniary profit.

120. A reasonable amount of money carried for traveling expenses or personal use is baggage.

121. A charge for baggage cannot be made in addition to the price for the ticket, unless it exceeds the prescribed or reasonable weight.

122. A check should be given for each parcel of baggage received by the company.

123. A notice limiting the liability of the company for the loss of baggage, published on the back of the passenger ticket or baggage check, is insufficient to be of legal effect.

124. The carrier is responsible for the loss of, or injury to baggage not occasioned by the act of God or the public enemy.

125. The company is liable for the loss of baggage left in the custody of the porter of a sleeping or drawing room car.

126. It is not the duty of the passenger to inform the company of the contents of his trunk, unless inquiry be made; but if asked he is bound to answer truly.

THE DUTIES OF THE EMPLOYE.

THE SUPERINTENDENT; CONDUCTOR; ENGINEER; BRAKEMAN; SWITCHMAN; DEPOT MASTER, ETC.

For decisions regarding the general duties of these agents they are referred to the preceding chapters, but I here give additional cases and statutory provisions that further define and explain their obligations.

127. The chief superintendent of every railroad must instruct the engine drivers and conductors under his control and management, as to the duty to ring the bell and blow the whistle, and to stop before crossing the track of an independent railroad, and order them to comply with the same. And on failure such chief superintendent shall, on conviction, be fined not less than one thousand dollars. (Ala. Code, sec. 1,405.)

128. Every conductor, baggage master, engineer, brakeman, or other servant of a railroad corporation in this state, employed on a passenger train or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office, and the initial letters of the name of the corporation by which he is employed. A conductor without his badge cannot collect fare or ticket, and no other of said servants without said badge shall have any authority to meddle or interfere with any passenger, his baggage or property. (Mich. Laws, ¶ 2,327; Ind. Stat., 1876, vol. 1, p. 708, sec. 24.)

129. The conductor has control of the entire train, and his act is rightfully regarded as the act of the company. The

driver of the engine occupies a different and very subordinate position. He has no right to say who shall be on the train. He is to look to his engine and keep it in order, and permit no one to ride upon it without permission of his superior. (Chic. & Alton R. R. v. Michie, 83 Ill., 430.)

130. Cars for the transportation of passengers and property shall start and run at regular times, to be fixed by public notice. (Mich. Laws, ¶ 2,334.)

131. It is the duty of conductors to run their trains according to the published time tables, and to make no stop not provided for therein. (Ohio & Miss. R. R. v. Hatton, Ind. Sup. Ct., 1878, RAILWAY AGE, May 9, 1878.)

132. Conductors and engineers are both responsible for the observance of the time schedule and other printed rules. To enter on the trip fifteen minutes after the prescribed time has expired is to vary from the schedule, and if done without express authority from the superintendent, or other proper general officer, it is a breach of duty. An engineer cannot excuse himself for commencing a trip fifteen minutes after his schedule time by the fact that he acted under the conductor's orders. (McDade v. The Georgia R. R. & Banking Co., Ga. Sup. Ct., RAILWAY AGE, Dec. 20, 1877.)

133. For a traveler upon a railroad train to pass from one car to another while the train is in motion may generally be considered an act of negligence or imprudence; but when a party, acting under a suggestion from the conductor, attempts to pass from car to car, and is injured in consequence of the fact that the train was still moving, such party will not be debarred from his right of recovery merely because he undertook to comply with the conductor's suggestion.

It is the duty of a railroad company to exercise the highest degree of care in the carriage of passengers, and it is the duty of conductors, when women and children are upon their trains, not to direct them to go into places of danger without furnishing such assistance as will prevent accident. (C., C., C. & I. R. R. v. Manson, Ohio Sup. Ct., 1878, RAILWAY AGE, Nov. 8, 1878.)

134. Where a train is run past its regular station, and is then backed up without notice to passengers, thereby injuring one of them, such passenger may recover on the ground of negligence of the company. (Tabor v. Delaware R. R., N. Y. Court of Appeals, 1877, RAILWAY AGE, Mar. 14, 1878.)

This rule applies particularly to trains running at night, and

passengers should be notified to keep their seats by the conductor, brakeman, or other agent of the company.

135. It is the duty of the engineer to keep vigilant watch of the track ahead of the train, and to use all proper care and caution to avoid injuries. (Albertson v. Keokuk & Des Moines R. R., Iowa Sup. Ct., 1878, RAILWAY AGE, Aug. 1, 1878.)

136. Signals of approaching trains should be given when the safety of travelers on intersecting roads so demands, and a habitual failure to give such warnings is an offense against the public and an indictable nuisance. (Louisville & Nashville R. R. v. Commonwealth, Ky. Sup. Ct. 1877, RAILWAY AGE, Feb. 14, 1878.)

137. It is the duty of those in charge of a train, when approaching a public crossing, to give notice by whistling, ringing the bell, or other device sufficient to warn of their approach, and in sufficient time to enable those coming to the crossing to stop in safety, or if on the track to get out of danger; also to look along the track, and if they see, or might see by due care and caution, any obstruction on the track, to check the train by every means in their power. (P., Ft. W. & C. R. R. v. Dunn, 56 Pa. St., 283; Goodfellow v. Bost., Hart. & Erie R. R., 106 Mass., 462.)

138. Every incorporated railroad company shall cause the bell to be rung or the steam whistle to be blown at the distance of at least three hundred yards from the place where any such railroad crosses a turnpike road or highway, and such bell shall be kept ringing or such whistle shall continue to be blown until the engine has crossed such turnpike or highway, or has stopped. (N. J. Stat., p. 910, sec. 6; also p. 933, sec. 29.)

139. A failure to comply with a statutory requirement to ring the bell or blow the whistle is negligence. (Fletcher v. A. & P. R. R., Mo. Sup. Ct., 1877, RAILWAY AGE, Dec. 6, 1877.)

140. An engineer must not permit his engine to run upon or across another track until the engine and train upon the other track have passed over such crossing, if the signalman from the locomotive or train on the other track shall arrive at the crossing first. (Ind. Stat., vol. 1, p. 749, sec. 3.)

141. If a railroad crosses a common road on the same level it cannot be expected that the train shall stop and give precedence to an approaching wagon to make the crossing first; but due warning of its approach must be given, so that the wagon

may stop and allow the train to pass, and every exertion to stop should be made if the wagon is inevitably in the way. Such warning must be reasonable and timely. But what is reasonable and timely may depend upon many circumstances. It cannot be such if the speed of the train be so great as to render it unavailing. And when intervening objects prevent those who are approaching the railroad from seeing a coming train, and an unslackened speed is desirable, watchmen should be stationed at the crossing. (Continental Improvement Co. v. Stead, U. S. Sup. Ct., 1877, RAILWAY AGE, Jan. 10, 1878.)

142. Neither passenger nor employe should ride on the pilot of an engine. The United States Supreme Court, in a case where an employe was injured while so riding, said: "He was guilty of such contributory negligence by taking such a dangerous position that he cannot recover, having himself brought the result." (Balt. & Po. R. R. v. Jones, Sup. Ct., 1877, RAILWAY AGE, Dec. 27, 1877.)

143. If domestic animals are on the track of a railroad company by the fault of the owner, such owner takes all reasonable risks of injury to them from passing trains; but the company is bound to use reasonable care to avoid injuring them, by which is meant the making of the same effort to avoid injuring an animal as a prudent man, owning both train and cattle, would make with proper regard for both. (Wetherell v. Mil. & St. P. R. R., Minn. Sup. Ct., 1878, RAILWAY AGE, April 25, 1878.)

144 A railroad company is liable for stock killed upon its track when such killing results from want of ordinary care and diligence. It is not necessary that the killing should be wanton, or willfully done by the servants. (Rockford, Rock. Is. & St. Louis v. Rafferty, 73 .Il., 58.)

145. Knowing y permitting a cow to run at large is not such contributory negligence on the part of its owner as will justify its willful killing by a railroad company when it could be avoided by ordinary diligence. (Det., Eel River & Ill. R R. v. Barton, Ind. Sup. Ct., 1878, RAILWAY AGE, Oct. 17, 1878.)

146. A mortal wound to live stock is equivalent to killing. (A., T. & S. F. R. R. v. Ireland, Kansas Sup. Ct., 1877, RAILWAY AGE, Feb. 7, 1878.)

147. Where an animal has been killed by a railway company the burden of proof is upon such company to show that it exercised all ordinary and reasonable care and

diligence to avoid the disaster. (Atlantic & Gulf R. R. v. Griffin, Ga. Sup. Ct., 1878, RAILWAY AGE, Sept. 12, 1878.)

148. An omission to attach a spark-arrester to the pipe of a stove in a switch house, in which wood is used as fuel, and from which sparks may escape, may be considered as negligence. (Briggs v. N. Y. C. R. R., N. Y. Court of Appeals, January, 1878, RAILWAY AGE, March 21, 1878.)

149. Findley, the plaintiff in this case, called with his team at defendant's depot for freight. The company's agent directed him to a position at the station within a few feet of the track, informing him that no train would pass for half an hour. A train came within five minutes, and one of his horses was injured.

The court held that he was not guilty of contributory negligence, and the damages assessed against the railway company were affirmed. (Allegheny Valley R. R. v. Findley, Penn. Sup. Ct., 1877, RAILWAY AGE, Dec. 20, 1877.)

CONCLUSIONS.

150. The officers of a railroad should instruct their agents regarding their duties and liabilities, as in most instances the company bears the burden of the employe's mistake or wrong. It is a well known principle that "ignorance of law is no excuse."

151. It would be well to have each employe wear a badge, or other insignia of office, as this would notify the passenger of his position and authority.

152. The conductor is regarded as the agent who controls the train, and he should see that it leaves and arrives according to the published time schedule. Stops should be made only as are provided for therein, except in extraordinary cases; and in case of unavoidable detention notice should be given along the line by telegraph or otherwise. He should also see that his subordinates exercise due care, and that every exertion is made to prevent injury to person or property. He should not direct passengers to go in places of danger, and especial care should be taken of women and children, or the aged and infirm.

153. The engineer should keep careful watch of the track in front of his engine, and should not allow persons to ride on it, without consent of the conductor, or in any other place of danger. He should give timely warning to persons who

are on the track, for nothing can justify him in carelessly running over man or animal, even though a trespasser. He should give signals whenever the safety of persons or property so requires; and upon coming to a crossing, the approach to which is hidden by a cut or brush, or in any way obstructed from view, he must not fail to give warning by ringing the bell or blowing the whistle, and he should stop the train if that is the only way in which an accident can be prevented.

154. Brakemen, switchmen, depot masters, and the other agents o' the company, should use especial care to guard against all kinds of accidents, whether in assisting passengers to alight from the cars, or from fire, or misplaced switches, or from giving wrong directions to those who transact business with the company, or wrong signals in time of peril. They should make the interests of the company their interests. Care and politeness cost no hing, and they bring to the employe a degree of respect not otherwise obtained, and at the same time promote the welfare of the company they represent.

THE LIABILITY OF THE EMPLOYE. CIVIL AND CRIMINAL.

FOR AN UNLAWFUL EJECTMENT; CARELESSNESS; NEGLECT; DISOBEDIENCE; NOT RINGING BELL OR BLOWING WHISTLE; BREAKING BAGGAGE, ETC.

The employe will recognize the importance of legal information when he knows that he is individually liable to the same punishment for wrong doing that can be inflicted on his employer.

If a conductor wrongfully eject a passenger; if the engineer carelessly run over a man or an animal; if the baggage man negligently break a trunk, or the switchman heedlessly misplaces a switch, he is liable to be sued for damages, separately or with the company, as a wrong doer; or if the company sustain damages through the negligence of an employe, such employe is liable to the carrier for the amount of damage done. But this is not the only liability, for almost all of the states have enacted statutes declaring the employe criminally liable for negligence, misconduct, or disobedience, and have made the different offenses punishable by heavy fine or imprisonment in the penitentiary, or both.

This doctrine of the joint liability of tort-feasors is of long standing, and well established.

155. A joint action of tort in the nature of trespass may be

maintained against a corporation and its servant for a personal injury inflicted by the latter in discharging the duties imposed on him by the corporation. (Hewitt v. Swift, 3 Allen, 420.)

156. A servant of the corporation who does an act forbidden by law is responsible for it in his own person, and the company is not presumed to have given him any authority for such an act. (Commonwealth v. Ohio & Pa. R. R., 3 Gr. Pa. Cases, 350.)

157. In the case of the Chicago City Railway v. Henry, 62 Ill., 142, the conductor was joined with the company in a suit for damages arising from an unlawful ejectment, and the supreme court said, in referring to the conductor, that "he was a defendant and would be liable, individually, for any judgment that might be recovered."

158. The Supreme Court of Alabama, in the case of the Mobile & Montgomery R. R. v. Clanton, May, 1878, held that when damage results to cars or other property of the corporation from the negligence of an employe in the performance of his duties, it may recover the damages in an action against him; the measure of damages being the cost of putting such property in repair, or placing the corporation, in respect thereto, in the condition it was before the injury occurred. (RAILWAY AGE, June 13, 1878.)

A few of the principal sections from the statutes of some of the chief railroad states are below given to show the criminal liability.

159. Whoever, having personal management or control of, or over, any steamboat or other public conveyance used for the common carriage of persons, is guilty of gross carelessness or neglect in, or in relation to, the conduct, management or control of such steamboat or public conveyance, while being so used for the common carriage of persons, whereby the safety of any person shall be endangered, shall be imprisoned in the penitentiary not exceeding three years, or fined not exceeding five thousand dollars. (Ill. Stat., sec. 49 of Crim. Code.)

160. Every engineer, conductor, brakeman, switch tender, or other officer, agent or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent, or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor. (Cal. Code, 1876, ¶ 13,393.)

And he may be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both. (Ibid, ¶ 13.019.)

161. If any person or persons in the service or employ of a railroad, or other transportation company doing business in this state, shall refuse or neglect to obey any regulation of such company, or by reason of negligence or willful misconduct, shall fail to observe any precaution or rule which it was his duty to obey and observe, and injury or death to any person or persons shall result thereby, such person or persons so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine not exceeding five thousand dollars, and to undergo an imprisonment in the county jail or in the state penitentiary not exceeding five years. *Provided*, That nothing in this act shall be construed to bar a trial and conviction for any other or higher offense, or to relieve such person or persons from liability in a civil action for such damages as may have been sustained. (Brightleys Purdon's Dig. Penn., p. 322, sec. 36.)

162. Any conductor, engineer, servant or other employe of any railroad corporation, who shall willfully violate any of the written or printed rules in relation to the running of cars or trains for the transportation of persons or property shall be subject to a fine of not less than twenty-five nor more than one hundred dollars, or to imprisonment in the county jail not more than six months. (Mich. Laws, ¶ 2,353.)

163. Every servant of any railroad company who shall, in consequence of his intoxication, or any gross or willful misconduct or negligence, cause any loss of life, or the breaking of a limb, shall be imprisoned in the state prison not more than ten years. (Conn. Stat., sec. 5, p. 498.)

164. If any person shall be maimed or otherwise injured in person or property through or by reason of the gross negligence or willful misconduct of any engineer or conductor of any engine or train of railroad cars or carriage, such engineer or conductor, on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars and undergo an imprisonment, by separate or solitary confinement or by simple imprisonment, not exceeding five years. (Brightleys Purdon's Dig. Penn., p. 322, sec. 35.)

165. If any engineer, officer, agent, or employe shall willfully or negligently disregard and disobey any rule, regulation, or published order of the company in regard to the running of

trains he shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine not exceeding one thousand dollars, or imprisoned at hard labor for any term not exceeding one year, or both, at the discretion of the court. (N. J. Code, p. 909, sec. 1.)

166. Every person in charge of a locomotive engine, who, before crossing any public way, omits to cause a bell to ring or steam whistle to sound at a distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor, (Cal. Code, 1876, ¶ 13,390.) And may be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both. (Ibid, ¶ 13,019.)

There is also a somewhat similar provision in the statutes of Michigan, Connecticut and Arkansas.

167. Every engineer for neglect to ring the bell at a distance of not less than eighty rods from the place where the railroad shall cross any traveled public road or street on the same level with the railroad, and to keep such bell ringing until the engine shall have crossed such road or street; or to sound the steam whistle at a distance not less than eighty rods from where the railroad shall cross any traveled public street or road on the same level with the railroad, except in cities, shall be fined not exceeding fifty dollars or imprisoned in the county jail not exceeding sixty days, in the discretion of the court. (Kay's Dig. N. Y. Stat., vol. 3, p. 213.)

168. If the engineer or other person having control of the running of a locomotive on any railroad in this state shall fail to blow the whistle or ring the bell at least one-fourth of a mile before reaching any public road or crossing, or any regular depot or stopping place on such road, and continue to blow such whistle or ring such bell at intervals until he passes such road crossing, and until he reaches such depot or stopping place; or to blow the whistle or ring the bell immediately before and at the time of leaving such depot or stopping place; or to blow the whistle or ring the bell on approaching any curve crossed by a public road in a cut where he cannot see at least one-fourth of a mile ahead, and approach and pass such crossing in such cut at such moderate speed as to prevent accident in the event of an obstruction at the crossing; or to blow the whistle or ring the bell on entering the corporate limits of any town or city, and continue to do so until he has reached his destination or passed through such town or city, or do the same on leaving such town or city; or on perceiving any obstruction on the track of the road, to use all means within his power known to skillful engineers (such as the application of his brakes and the

reversal of his engine) in order to stop the train, he shall be punished by a fine not less than fifty nor more than a thousand dollars, and imprisoned in the county jail for not more than twelve months, one or both, at the discretion of the jury. (Ala. Code, secs. 1,399 and 1,400.)

169. A person in charge of a locomotive engine upon any railroad who fails to bring the engine and train to a full stop at least two hundred feet before arriving at any railroad crossing or connection, or crosses the same before being signaled by the watchman to cross, or before the way is clear, or when approaching any road-crossing fails to sound the engine whistle at a distance of not more than one hundred nor less than eighty rods from such crossing, or to ring the engine bell continuously from the place aforesaid until the engine and cars attached shall have passed such crossing, shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both; or if, by reason of such violation, any person be killed the person in charge of such engine shall be deemed guilty of manslaughter, and punished accordingly; or if any person sustain bodily injury, not producing death, the person in charge of such engine shall be imprisoned not more than twenty months nor less than one month, or fined not more than five hundred dollars; and whoever permits any car or locomotive of which he has charge to remain upon or across any public road, street, or alley, for a period longer than five minutes, or places any timber or other obstruction upon or across any such road, street, or alley, to the hindrance or inconvenience of travel thereon, shall be fined not more than twenty or less than five dollars. (Ohio Crim. Code, p. 179, sec. 46.)

170. It is unlawful for any conductor running a railroad train to allow the same to remain standing across any public highway or street, to the hindrance of travel, for a longer time than ten minutes, and a conductor guilty of violation thereof shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten or more than fifty dollars, and shall be held in custody until the same is paid or replevied. (Ind. Stat., vol. 1, p. 750, sec. 1.)

171. All railroad trains shall be brought to a full stop at a distance of not less than two hundred nor more than eight hundred feet from the draw in every draw bridge, and from every point where such railroad is crossed by another railroad, and in plain sight of the same before running upon or over such drawbridge or crossing, and every person running such train who shall violate these provisions shall be fined not exceeding one hundred dollars or imprisoned not exceeding three months;

ADDITIONAL CASES.

CARE BY THE PASSENGER.

181. The company is not liable for the death of, or injury to, a person who attempts to get on a train when it is moving out of the depot. (Flint & Pere Marquette R. R. v. Stark, Mich. Sup. Ct., June, 1878, RAILWAY AGE, Nov. 28, 1878.)

THE PASSENGER'S TICKET; EJECTMENT.

182. The holder of a round trip ticket on which is printed, "Good for a continuous trip each way only," cannot stop over and resume his trip at pleasure. He must pay fare, or the conductor may eject him. (Pierce v. A., Y. & P. R. R., U. S. Circuit Court, Northern Dist. Ohio, Nov., 1878, RAILWAY AGE, Nov. 28, 1878.)

183. A 1,000 mile ticket which is dated, and expresses a condition that it is good only when presented within six months from date, cannot be used after the expiration of the six months.

A person who goes into a car with the deliberate intention of laying the foundation of a law suit, and with no intention of becoming a passenger, is as much of a trespasser as if he enters to rob it of its contents. (Lillis v. St. L., K. C. & Nor. R. R., Mo. Sup. Ct., 1878, RAILWAY AGE, Dec. 5, 1878.)

EMPLOYE'S LIABILITY.

184. When a person engages in the employment of another he undertakes to obey all lawful orders, and subjects himself for any failure to do so, not only to a liability for damages, but also to being expelled from employment. (C. & N. W. R. R. v. Bayfield, Mich. Sup. Ct. 1878.)

FINAL CONCLUSION.

It must be manifest in the light of the foregoing chapters, as stated in my preface, that an ignorant or willful disregard of the rules of law by railway employes costs the companies very large sums of money every year, and that the true safeguard against such losses is a more thorough knowledge of legal rights, duties and responsibilities, and a corresponding fidelity in their application to every day business.

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